

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
ALLTEL Nebraska, Inc.)	CC Docket No. 96-45
)	
Petition for Waiver of)	
Section 54.314)	
of the Commission's Rules)	
_____)	

**PETITION FOR WAIVER –
EXPEDITED ACTION REQUIRED**

ALLTEL Nebraska, Inc. (formerly Aliant Communications, hereinafter "ALLTEL"), pursuant to Section 1.925(b)¹ of the Commission's rules, respectfully requests a waiver of Section 54.313² of the Commission's rules requiring timely state certification for non-rural incumbent local exchange carriers ("ILECs") in order to be eligible to receive universal service support. ALLTEL is one of only two non-rural ILECs providing local exchange telephone service in the state of Nebraska.³ Historically, neither ALLTEL nor Qwest had received state certifications inasmuch as the average line costs within the state for their service territories did not exceed the national benchmark by the required amount.⁴

¹ 47 C.F.R. § 1.925(b)

² 47 C.F.R. § 54.313

³ The other non-rural ILEC operating in Nebraska is Qwest Corporation.

⁴ ALLTEL had made inquiry of the Nebraska PUC to determine whether it should seek certification pursuant to Section 54.313 of the Commission's rules prior to the time its average line costs qualified it to

On December 24, 2003, the Commission released its FCC Order in the above-captioned docket⁵ updating the methodology for line counts and inputs used in the Commission's forward-looking cost model to compute non-rural high cost support. The changes set forth in the FCC Order were effective January 1, 2004.⁶ As a result of the revised cost estimates generated by the model using the input values adopted in the FCC Order, non-rural high cost support became available for the first time in Nebraska, and ALLTEL became eligible to receive high cost support.

Under the Commission's rules, carriers who are certified by October 1 of the previous year are eligible for high cost support for the entire succeeding year. Carriers certified by January 1 receive support in the second, third and fourth quarters of that year, and carriers certified by April 1 receive support for the third and fourth quarters of that year.⁷

The Neb. PUC at the request of the subject carriers and on its own motion issued an order dated March 16, 2004 providing ALLTEL (and Qwest Corporation) with the certification required under Section 53.313 per the established self-certification process for ILECs in the state.⁸ Inasmuch as the Neb. Order post dated the October 1, 2003 filing deadline for certifications on behalf of those carriers seeking support beginning January 1, 2004 – the date the

receive support. The Nebraska Public Service Commission ("Neb. PUC") advised against ALLTEL's certification request noting that ALLTEL did not qualify for support at that time based upon the Federal Communications Commission's ("FCC") non-rural forward-looking support model.

⁵ See *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45 DA 03-4070 (WCB, released December 24, 2003.) ("FCC Order")

⁶ See Order at para. 1; Public Notice, *Wireline Competition Bureau Releases Estimated State-by-State High-Cost Universal Service Support Amounts for Non-Rural Carriers for 2004*, CC Docket No. 96-45, DA 03-4071 (released December 24, 2003.)

⁷ 47 C.F.R. §§ 54.313(d)(3)(i), 54.313(d)(ii), 54.313(d)(iii).

modifications contained in the FCC Order took effect – ALLTEL seeks waiver of the filing deadline in order that it may be permitted to draw support for each of the first and second quarters of the year 2004.

The Commission may waive any provision of its rules for good cause shown.⁹ Federal courts have held that the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."¹⁰ Furthermore, Section 1.925(b)(3) of the Commission's rules provide that a waiver is appropriate when the intended purpose of the rule is not served when it is applied to unusual facts and circumstances resulting in an inequitable outcome.¹¹

A grant of ALLTEL's waiver is appropriate for good cause shown under the special circumstance of this matter and in accord with Commission precedent. Non-rural carriers in Nebraska became eligible to receive non-rural forward-looking support only after the October filing deadline when the changes under the FCC Order took effect. On the basis of the changes, the Neb. PUC proceeded to provide the certification without undue delay in order to ensure that ALLTEL received the high cost support needed to maintain affordable and comparable telecommunications services in high cost areas.¹² The Commission has noted the potential for harm to consumers resulting from the loss of federal high cost support occasioned by an untimely certification due to inadvertent error -- as opposed to a change in the line counts as is

⁸ See, *In the Matter of the Nebraska Public Service Commission, on its Own Motion, Seeking to Establish Guidelines for the Purpose of Certifying the Use of Federal Universal Service Support*, Progression Order No. 11 (entered March 16, 2004) ("Neb. Order") (copy attached hereto as Exhibit 1).

⁹ 47 C.F.R. Sec. 1.3

¹⁰ *Northeast Cellular Tel. Co., L.P. v. FCC*, 879 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ 47 C.F.R. §§ 1.925(b)(3)(i), 1.925(b)(3)(ii)

the case here -- in approving past requests for waiver of the certification requirement.¹³ Further, ALLTEL has supplied an affidavit to the Neb. PUC indicating under oath that it will use the funds received from high-cost support in a manner fully consistent with the requirements of Section 254 of the Act.¹⁴ ALLTEL also notes that grant of its waiver request is consistent with the policy set forth for the first program year under Section 54.313(d)(1) of the rules inasmuch as retroactivity was expressly contemplated to provide non-rural carriers with support for the entire year where the prescribed certification filing deadline under the rule had passed. Grant of the relief requested by ALLTEL would not only be consistent with past precedent governing non-rural ILECs,¹⁵ but also with the relief granted to newly certified wireless ETCs to provide retroactive support from the date upon which they first qualified as an ETC.¹⁶

Under the facts set forth in this petition, and in light of the Neb. PUC's support for ALLTEL's waiver request, a strict application of the Commission's rules would be contrary to the public interest. Accordingly, ALLTEL respectfully requests that the Commission grant this

¹² See Neb. Order at para. 6, supporting grant of ALLTEL's anticipated waiver request.

¹³ See, *In the Matter of Federal-State Joint Board on Universal Service; West Virginia Public Service Commission Request for Waiver of the State Certification Requirements for High Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784 (2001) at para. 7 ("WVa Order"); *In the Matter of Federal-State Joint Board on Universal Service; Puerto Rico Telephone Company Request for Waiver of the State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 18 FCC Rcd 26325 (WCB, released December 19, 2003) at para. 5. ("PRTC Order").

¹⁴ See, Neb. Order at para. 3.

¹⁵ See Wva Order and PRTC Order supra. While the requirement that a state PUC provide the certification might otherwise suggest that the state PUC should be the party filing the waiver request with the FCC as was the case with the W.Va. Order, the Commission has found it appropriate for the carrier to file the waiver request, particularly where the state PUC is on record supporting the waiver. See PRTC Order at n. 13.

¹⁶ See, for example, *In the Matter of Federal-State Joint Board on Universal Service, RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, DA 02-3316 (WCB, released December 4, 2002).

waiver and allow the Administrator to disburse the non-rural forward-looking support due ALLTEL for the first two quarters of 2004.

Respectfully submitted,

ALLTEL Nebraska, Inc.

By: /s/ Glenn S. Rabin
Glenn S. Rabin
David C. Bartlett

Its Attorneys

ALLTEL Corporation
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, D.C. 20004
(202) 783-3970

Dated: March 23, 2004

CERTIFICATE OF SERVICE

I, Glenn Rabin, hereby certify that a copy of the foregoing **Petition for Waiver** has been served this 23rd day of March 2004 via electronic mail (*) or hand-delivery to the attached service list.

_____/s/_____
Glenn S. Rabin

SERVICE LIST

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ATTACHMENT ONE

March 16, 2004

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 - 12th Street, SW, Room TW-B204
Washington, DC 20554

RE: CC Docket No. 96-45

Dear Secretary Salas:

Pursuant to 47 C.F.R. § 54.314, I hereby certify that the following carriers will use high-cost federal universal service support, only for the provision, maintenance, and upgrading of facilities and/or services for which the support is intended in accordance with section 254(e) of the Telecommunications Act of 1996, as amended:

Qwest Corporation
ALLTEL Nebraska Incorporated

We aware that Qwest and ALLTEL are going to seek waivers in order to qualify for federal high-cost support effective January 1, 2004. The Nebraska Public Service Commission supports and urges the FCC to support these waiver requests.

If you have any questions or concerns, please contact Jeff Pursley, Director, Nebraska Universal Service Fund, (402) 471-0264.

Sincerely,

Gerald L. Vap
Chair

Attachment

cc: Ms. Irene Flannery, Administrator
Universal Service Administrative Company, High Cost Division
2120 "L" Street, NW Suite #600, Washington, DC 20037

ATTACHMENT TWO

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) APPLICATION NO. NUSF-25
Public Service Commission, on)
its own motion, seeking to)
establish guidelines for the) Progression Order # 11
purpose of certifying the use of)
federal universal service)
support.) Entered: March 16, 2004

BY THE COMMISSION:

1. The Commission has established self-certification as its process for verifying whether all federal high-cost support will be used for its intended purpose, pursuant to 47 C.F.R § 54.313 and CC Docket No. 96-45. See Application No. NUSF-25, Progression Order #1 (August 21, 2001).

2. On February 26, 2004, Qwest Corporation (Qwest) caused to be filed an affidavit of John Richardson, Senior Vice President and Controller for Qwest. Mr. Richardson's affidavit, dated February 25, 2004, certifies that Qwest will use any funds received from the Federal Universal Service High Cost Support Fund for purposes consistent with Section 254(e) of the Telecommunications Act of 1996 (the Act) as amended.

3. On March 11, 2004, ALLTEL Nebraska Inc. (ALLTEL) caused to be filed an affidavit of Steve R. Mowery, Vice President of State Government Affairs for ALLTEL. Mr. Mowery's affidavit dated March 10, 2004, certifies that ALLTEL will use any funds received from the Federal Universal Service High Cost Support Fund for purposes consistent with Section 254(e) of the Act as amended.

O P I N I O N A N D F I N D I N G S

4. The Commission finds that Qwest and ALLTEL filed properly completed affidavits.

5. Accordingly, the Commission will provide certification to the Administrator of the federal high-cost universal service support mechanisms and the Federal Communications Commission that Qwest and ALLTEL will use federal high-cost support only for the provision, maintenance, and upgrading of facilities and/or service for which the support is intended in accordance with section 254(e) of the Act, as amended.

Progression Order No. 11

6. The Commission is aware that both Qwest and ALLTEL will be seeking waivers from the Federal Communications Commission of the state certification requirements in order to receive federal high-cost universal service support for the first quarter of calendar year 2004. According to rule 54.313(d)(3)(i) in order for a carrier to receive first, second, third and fourth quarter high-cost support for the succeeding year, the Commission must file its certification to the FCC by October 1st. The FCC's Order and Order on Reconsideration¹⁷ was issued subsequent to the October 1, 2003 deadline. As of October 1, 2003, Qwest and ALLTEL were not eligible to receive high-cost support and accordingly did not file the required affidavit with the Commission at that time. The Commission believes that the granting of such waivers would be in the public interest and are necessary to ensure that Qwest and ALLTEL receive the high-cost support needed to maintain affordable and comparable telecommunications services in high-cost areas. The Commission therefore supports their waiver requests.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the affidavits filed by the above-named carriers are accepted.

MADE AND ENTERED at Lincoln, Nebraska this 16th day of March 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

¹⁷ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, DA 03-4070 (rel. December 24, 2003).